

AGENDA

Livestock Facility Siting Review Board

June 30, 2006

Boardroom 106, DATCP, 2811 Agriculture Drive, Madison

- 10:00 a.m. Call to order—Cheryl Daniels
- Open meeting notice
 - Approval of agenda
 - Approval of May 30, 2006, meeting minutes
- 10:15 a.m. Review and discussion of proposed bylaws
- 11:45 a.m. LUNCH
- 12:30 p.m. Continue discussion of proposed bylaws
- 1:30 p.m. Adoption of bylaws
- 1:45 p.m. Election of officers
- 2:15 p.m. Administrative housekeeping
- Expense reports
 - Mailing procedures
 - Next meeting and cancellation procedures
- 2:30 p.m. ADJOURN

**MINUTES
LIVESTOCK FACILITY SITING REVIEW BOARD MEETING
May 30, 2006
Room 106, 2811 Agriculture Drive, Madison, WI**

The meeting started at 9:30 a.m. LFSRB members present were Lee Engelbrecht, Andy Johnson, Jim Holte, Bob Selk, Bob Topel, Fran Byerly, and Dr. Jerome Gaska. DATCP staff present were Rod Nilesestuen, Cheryl Daniels, Kathy Pielsticker, Dave Jelinski, Richard Castelnuovo, and Lori Price

Welcome by Secretary Nilsestuen

Nilsestuen welcomed the new Livestock Facility Siting Review Board (LFSRB) members and thanked them for their willingness to serve on the board. He stated the board was essentially an appellate body and will be establishing precedent for ATCP 51. The board will also have an impact on the effectiveness of the rule. Wisconsin broke ground on the important issue of siting large livestock operations, and it took 30 months to establish the rule. The rule's end product allows for predictability of growth and land use. Local governments have received the siting guidance, and the board will have excellent department staff to work with.

Appointment of temporary chair

Castelnuovo stated until the board has had an opportunity to elect officers, Daniels offered to serve as temporary board chair. Daniels introduced herself as the department attorney that works directly with Secretary Nilsestuen. She administers cases, sits as a quasi judge for the department, and finalizes decisions made by the Department Secretary. She has worked in this area of DATCP since 1988. She also gave a brief history of her other roles in DATCP prior to 1988.

Daniels stated the board will review local decisions to make sure they followed the law. The board is not allowed to bring in new evidence to a case it is reviewing. The case records the board will receive may be large. Local governments will deal with cases where a facility requesting expansion has complied with the law and was issued a local permit but the local people are unhappy with the decision. The board will not be dealing with these types of cases.

Holt made a motion to appoint Daniels as the temporary board chair until officer elections have taken place. Johnson seconded the motion. The motion passed.

Introductions

Byerly stated he has been a Wisconsin resident all his life and is also a livestock producer with Jennie-O farms. He was nominated by the Poultry Working Group, and understands the need to not have unlimited expansion and the need for air and water protection.

Engelbrecht introduced himself as the towns' representative to the board. He operated a dairy farm up until two years ago. Now he operates a livestock trucking company. He expressed the need to keep livestock farming as part of Wisconsin.

Selk retired from the Wisconsin Department of Justice in 2004. He worked in the environmental enforcement area in DOJ. He is active in Trout Unlimited, who along with Midwest Environmental Advocates nominated him to the board. He served on the Dairy Green Tier and Manure Management Task Force initiatives. He stated he understands the board has a limited role and will work independently from DATCP. His goal is to act on consensus and help to form a coherent cooperative group that is effective in implementing the law.

Gaska has lived in Columbus most of his life. He knows first hand what farms have had to go through in order to expand. He was nominated by the Wisconsin Veterinary Medical Association and is looking to provide a balanced view to the board.

Topel introduced himself as a dairy producer from the Waterloo area. He was nominated by the Wisconsin Federation of Coops. He also ran into an issue with expansion when his daughter returned to farm with the family. He has served for the last 15 years on the Foremost Farms Board of Directors. He is looking forward to working with this board.

Johnson was nominated by the Wisconsin Counties Association. He is a resident of Marathon County. He worked on the NR 243 and technical standards committees. He works with the Marathon County Conservation, Planning and Zoning Department providing technical support on manure storage and storm water control. The bulk of his career has been working with Concentrated Animal Feed Operations (CAFO). He has also been involved with enforcement activities. He looks forward to serving on the board.

Holte was nominated by the Wisconsin Farm Bureau Federation. Previously he worked on the livestock siting committee that developed the rule. He was in the dairy business until 1997 and is currently in the cattle feed business.

After board member introductions took place, DATCP staff introduced themselves. Jim Massey with the Country Today and Joan Shepel with the Wisconsin State Farmer also introduced themselves.

Presentation and discussion of livestock siting law and rule—Dave Jelinski, DATCP

Jelinski's presentation covered origins and features of the law, features of the rule, affected stakeholders, local governments with existing permit requirements, application criteria, key permit requirements, other laws that affect livestock siting, and siting standards and worksheets. He stated that by the end of the year, department staff hope to have a complete and accurate record of all county/local ordinances once they decide whether to participate in the program, which needs to be decided by November 1, 2006. Jelinski ended his presentation by listing the benefits of the rule and the departmental resources available to the board.

Johnson asked if there will be an incursion to fix the animal units as a reference point (to establish it). Jelinski responded that given the legislative debate on this item in the rule, the animal units question is not over yet. There may be vigorous debate on this issue particularly given the fact that DNR has come up with another system that has been submitted to the legislature.

Presentation and discussion of roles and responsibilities of the board and staff—Richard Castelnovo, DATCP

Castelnovo gave a presentation on the interaction between the law and the board. In his presentation, he addressed the board's primary roles including the meaning of quasi-adjudicatory, the siting law functions the board will not do, challenges to maintaining partiality, knowing the laws that affect livestock siting, the standards for local approval, timely review of cases, the purpose of the board attorney, what the board can do during the decision-making process, and what service DATCP staff can specifically provide to the board.

Selk asked what role DATCP staff will have in decision-making. He was concerned that there may be undo influence on the board through DATCP staff receiving outside information on the case. Castelnovo responded that if board members have questions about a case, they should contact the board attorney, who is separate from the processes bureau staff will be involved with. Board members should not call other DATCP staff directly about a case.

Selk asked if the board will have the duty to determine if the application is complete since the board cannot defer to the local decision. Daniels responded that is something the board will have to decide, and then that decision should be used on a consistent basis.

Holte asked if the meetings will be open to the public. Castelnovo responded that the regular portion of the meeting will be open to the public but the board will need to decide whether to make their decisions under closed or open sessions. This will be discussed when the board reviews the draft bylaws. Topel asked if the board should ask questions about the case before the meeting or during the meeting. Jelinski responded the board members should call Daniels with questions about the case before the meeting. If board members still have questions, they may bring them to the meeting. Questions regarding board meeting administration should be directed to Lori Price. Daniels encouraged the board to bring any general questions they may have about the law to the next meeting (June 30th).

Holte asked if the aggrieved party will have the option to give oral argument to the board during the meeting. Selk recommended not allowing for oral arguments or using discretion when allowing for oral argument. Daniels added that other boards reserve the right to hear oral argument and it is done on a very limited basis, usually in exceptional cases.

Review and discussion of proposed bylaws—Cheryl Daniels, DATCP

Daniels led the board members through discussion of the proposed bylaws. The first section reviewed was on the purpose of the board. Selk asked if the bylaws affect the law. Daniels responded they affect the law in that they are rules the board must follow. Jelinski added when

the rule was first written, there was a decision not to have the department do the bylaws for the board. Bylaws can be clumsy at first but overtime can work. It would be much harder for the board to do their bylaws through the rule-making process.

Next section covered was board membership. Daniels stated this section covers who comprises the board membership, how vacancies are handled, board member terms, attendance at meetings, and the required oath of office. Selk asked if the board has any authority with respect to vacancies. Daniels replied the law demands the DATCP Secretary choose the members. Castelnuevo stated he will include the reference to this portion of the law in this section. Jelinski stated for board continuity, the department chose to include an attendance section, which is not in the law itself.

The board moved on to the officers section of the bylaws. Daniels stated officers are elected each odd-year. Selk questioned whether elections should take place every year. The board decided to change this section to reflect that officers are elected in June of each year.

The board then reviewed the authorities and responsibilities section. During the explanation of the quasi-adjudicatory functions of the board, there was discussion on whether the board seeks enforcement of its decision in a court of law. Members agreed the statement indicating the board seeks enforcement should be removed as it is misleading. Local governments will need to pursue enforcement of a board decision. Topel asked if the board first decides if it has precedence over a case and then decides if the local decision was right or wrong. Daniels responded the board can give authority to her to decide which cases come before the board. At the next board meeting, the board can report on the cases that they will not be reviewing. However, the board may recommend reviewing a case regardless of Daniels' recommendations. She would then request the record from the local government. Selk expressed a concern that if the board decides not to take a case, the aggrieved party must be given a chance to file a motion to reconsider. Byerly asked if he can converse with other board members between meetings. Daniels responded that board members cannot converse on cases between meetings. Also, the board can have a meeting without a quorum, but no decisions can be made at the meeting. The board can also choose to hold a meeting through conference call or by e-mail.

The section on the decision-making process was discussed next. Daniels stated that the decision-making procedures were outlined in Appendix A to the bylaws, and DATCP staff are available for administrative and legal support on the procedures. Selk asked if the decision is made first and then the order is drawn up. Daniels confirmed this, adding that legal should not be drawing up an order ahead of time. Castelnuevo added that it is possible that a quasi order may have to be drawn up to request records from local governments. Daniels made the suggestion the board could give her the authority to request the record. Selk asked if the board should send a notice to the local government stating that a request for review was filed. Daniels responded that a notice can be sent and can include information that the board will deal with the jurisdiction issue at its next meeting. She gave further explanation about the 30-day and 60-day timelines. Topel suggested the notice also include the date when the board will take up the case. Johnson suggested the request for the record be sent certified mail, and Byerly added the board decision should also go through certified mail.

The meeting procedure section was reviewed next. Daniels said that monthly meetings will be scheduled and if the board does not need to meet, the meeting will be cancelled. The board made minor changes in this section to reflect additional, rather than “special,” meetings may be called; meetings will be held at other locations, besides Madison, as determined by the board; agendas will be prepared by DATCP staff in consultation with the board chair; agendas for additional meetings will be mailed as soon as possible; elimination of oral arguments as a potential agenda item; the board approves the minutes; and the board makes decisions only during meetings, not through polling or balloting members. Johnson suggested that minimally, the agenda and minutes should be sent electronically. There was also further discussion on if roll call votes should be taken at meetings and how this may potentially impact the final board decision.

Compensation and expenses were discussed. The board members made changes to this section to reflect that they will not be receiving per diems and that members need to get approval from the board chair to attend meetings outside of the board meetings.

Amending the bylaws was discussed next. The board made the change that the bylaws can be amended through a two-thirds majority vote. The last of the bylaws sections addressed assistance that DATCP staff will provide to the board. Board members should request staff assistance through Daniels.

The board then moved on to review the procedures for reviewing a case. Under the initiation of proceeding section, there was discussion on giving the applicant, who may not be the aggrieved party, a chance to present their side of the case and sending notification to other parties who reside near the facility. Castelnovo will further research noticing parties in an appeal and get back to the board with an answer. The board members decided to make the 30-day time limit apply to requests for record and not in cases where the board is first reviewing jurisdiction. Topel expressed a concern with what is required to be sent as part of the record and what will happen when the board is missing pieces of the record. Daniels responded the board will have to review the case to decide if enough materials are there to make a decision. Castelnovo added there are a couple of items, such as the application and ordinance, required to be sent in as part of the record.

In the pre-decision administrative procedures section, Selk stated that the applicant should receive notice as well. The rest of the board members were open to this idea.

Under the decision making process section, the board added that a motion to reconsider should be received within fifteen days of the board’s decision. The paragraph on the rights of parties was eliminated. Deliberation was discussed next. Daniels stated that candor plays a part in quasi judicial boards. The board may want to consider holding the decision discussion in closed session in order to reach a consensus and vote on the decision in open session.

Under the rules of conduct section, the board decided to eliminate the paragraph that states a board member may be disqualified from a case review if they receive communication about a case outside of the record that was submitted.

If the board members have any additional comments on the bylaws or procedures, they should send them to Daniels within the next two weeks.

Administrative housekeeping

Price explained the Taxpayer Identification Number (W-9) form needs to be filled out by each board member so they can be entered into the state's payment system and be reimbursed for travel expenses. Also, Castelnuovo stated that materials will be sent through e-mail to the board members. The board then set the dates for the rest of their meetings in 2006: June 30th, July 21st, August 18th, September 15th, October 20th, November 17th, and December 15th. After the June meeting, the meetings will fall on the third Friday of the month.

Adjourn

The meeting ended at 4 p.m.

Respectfully submitted,

Date

Recorder: LP

*WISCONSIN
Livestock Facility Siting Review Board*

BYLAWS



Adopted _____, 2006

*Wisconsin Department of Agriculture, Trade
and Consumer Protection
P.O. Box 8911
Madison, WI 53708-8911
(608)224-4622*

I. PURPOSE

The Wisconsin Livestock Facility Siting Review Board (the board), which is attached to the Department of Agriculture, Trade and Consumer Protection (DATCP), is responsible for determining whether challenges to local livestock facility siting decisions are valid. Specific authorities and duties are listed in Appendix A.

II. MEMBERS

A. Members

As required by s. 15.135(1)(a) of the Wisconsin Statutes, the board consists of:

- 1) A member representing the interests of towns, selected from a list of names submitted by the Wisconsin Towns Association;
- 2) A member representing the interests of counties, selected from a list of names submitted by the Wisconsin Counties Association;
- 3) A member representing environmental interests, selected from a list of names submitted by environmental organizations;
- 4) A member representing livestock farming interests, selected from a list of names submitted by statewide agricultural organizations.
- 5) Three other members

The members shall be nominated by the secretary of agriculture, trade, and consumer protection, and with the advice and consent of the senate appointed, for 5-year terms.

B. Vacancies

Vacancies shall be filled in accordance with Sec. 15.135(1), Stats.

Consistent with this authority, the procedures for filling vacancies are as follows. -In the event of a vacancy of one of the four designated member seats, the secretary of agriculture, trade, and consumer protection will solicit names from the appropriate organization or organizations and choose a member from among the nominees. If one of the at large member seats is vacant, the secretary of agriculture, trade, and consumer protection will nominate a member. All nominations are subject to the advice and consent of the senate.

C. Terms

The terms of members are for 5 years and shall expire on May 1. Terms of the initial Board members were designated in 2003 Wisconsin Act 235, Section 4. Nonstatutory Provisions (2).

D. Attendance

If a member is absent at three consecutive meetings without good reasons, as determined by the board, the board shall bring the matter to the secretary's attention.

E. Oath of Office

Each member shall take and file the official oath prior to assuming office. [s. 15.07(7), Stats.]

III. OFFICERS

~~At its first meeting in each year, the board shall elect a chairperson, vice chairperson and secretary each of whom may be reelected for successive terms. At its first meeting in each odd-numbered year, the board shall elect a chair, vice chair and secretary, each of whom may be re-elected to succeed himself or herself. [s. 15.07(2), Stats.]~~ If an office becomes vacant, the Board may hold a special election at any regularly scheduled board meeting.

IV. AUTHORITIES AND RESPONSIBILITIES

A. Adjudication

The board has quasi-adjudicatory authority to perform the following functions:

1. Review challenges filed by aggrieved ~~parties~~ persons with respect to ~~of~~ decisions to approve or deny an application for local approval of new or expanded livestock facility.
2. Determine if a challenge~~d~~ is valid based on whether the decision of the political subdivision incorrectly applied the state standards under S. 93.90 (2) (a) that are applicable to the livestock facility siting or expansion or violated S. 93.90 (3).
3. Affirm the decision of the political subdivision or reverse that decision based on whether or not the challenge is valid.
4. Prepare policy recommendations in connection with individual decisions, and direct transmission of the decisions as necessary.

~~5. Seek enforcement of its decision in a court of law, if appropriate.~~

A detailed description of the adjudicatory procedures is provided in Appendix A.

B. Board Management

The board has policy and rule making authority to perform the following functions:

1. Establish how the Board will conduct its business, including procedures to review cases.
2. Establish how others interact with the Board.
3. Evaluate and make recommendations regarding the operation and management of the Board.
4. Pursue formal rules if needed.

V. DECISION MAKING PROCESSES

Functioning in its quasi-adjudicatory capacity, the board will use the procedures outlined in Appendix A.

DATCP will support the Board as follows:

1. Provision of legal and other assistance to explain statutory and rule requirements.
2. Management of case files and communications about cases, including the use of docket sheets to track activity and ensure prompt, proper, and timely compliance with the review procedure.
3. Preparation and issuance of required notices and orders.
4. Scheduling and coordination of board meetings, including agenda preparation, distribution of meeting materials, and drafting minutes.
5. Provision of legal assistance as required to resolve cases, including preparation of a final decision.
6. Provision of expert assistance, as needed, on water quality issues.

VI. MEETING PROCEDURES

A. Schedule and Place of Meetings

1. Meetings will be scheduled monthly and may be cancelled, if not needed.
2. ~~Special-Additional~~ meetings may be called by the chair at anytime, as required to take action on cases.
3. Meetings will ~~generally~~ be held at DATCP, in Madison, or at other appropriate locations as determined by the board. The board may also hold meetings by conference call.
4. All meetings shall be noticed in accordance with the open meeting laws, Chapter 19, Stats.

B. Agendas

1) Individual Meeting Agendas

The agenda shall be prepared by the DATCP staff ~~of the DATCP Land and Water Resources Bureau~~ in consultation with ~~the board attorney, and coordinated with~~ the chair of the board, at least 14 calendar days prior to the next scheduled meeting. The agenda and materials will be mailed to members at least 10 days prior to the next regularly scheduled meeting, except a shorter interval may permissible under certain conditions (e.g. to accommodate an additionally scheduled meeting) in the case of special or emergency meetings.

The agenda shall include:

- a) approval of minutes of the previous meetings(s),
- b) approval of agenda and additions or changes,
- ~~e) oral arguments, if any,~~
- ~~d)c)~~ actions as authorized by statutes,

~~e)d)~~ other business authorized by law, and

~~f)e)~~ future meetings scheduled.

C. Minutes

Minutes of each meeting shall be taken by DATCP staff and signed by the secretary following approval by ~~of~~ the board. Minutes shall record all board actions. Minutes shall be mailed to each member. Minutes and all other records of the board shall be retained as required by law.

D. Board Materials

1) Review

Materials related to board decisions on individual cases shall be prepared by the board attorney.

Informational materials or materials related to board decisions on matters of policy shall be prepared by DATCP staff or the board attorney.

2) Distribution

All board materials will be distributed to the board under the signature of the board attorney or livestock facility siting review board staff.

Materials shall be mailed to the board at least 10 days prior to the board meeting, and sooner if possible. However, upon permission of the board chair, staff may distribute certain materials at board meetings to supplement presentations to the board, when appropriate.

Electronic distribution of meeting materials is preferred except where size of meeting materials reaches an unmanageable size.

All press releases prepared by staff pertaining to board issues shall be reviewed and approved by the board chair.

E. Conduct of Meetings

1) Conduct of Meetings

The chair or, in the absence of the chair the vice chair or, in the absence of both, the secretary, or in the absence of all three, any member chosen by the members present, shall call the meetings of the board to order and shall act as chair of the meetings. The board secretary shall act as secretary of all meetings of the board. In the absence of the secretary, the presiding officer may appoint any member present to act as secretary of the meeting. The secretary shall direct the department to prepare minutes of all board meetings. Any subject matter regarding procedure not covered by these bylaws will be covered by *The Sturgis Standard Code of Parliamentary Procedure*. Meetings shall be conducted in accordance with Wisconsin's open meeting law.

~~2) Unanimous Consent Without Meeting~~

~~Except as prohibited by law or by these bylaws, action may be taken by telephone poll or mail ballot of the members without a meeting if all board members at the time so consent. Any action so taken by the board shall be ratified by the board at the next regular or special meeting of the board.~~

~~3)2)~~ Manner of Acting

Except as otherwise expressly provided in these bylaws, action shall be taken by the board upon a vote of a majority of the members present at a meeting and the same shall be the action of the board. The voting on all matters at a meeting for which a roll call vote is requested shall be by yeas and nays and the yeas and nays shall be entered upon the minutes of the meeting. In the case of a tie vote, the motion will fail. Each member is allowed one vote on all motions concerning business of the board.

~~3)4)~~ Quorum

Four board members shall constitute a quorum and no formal business may be transacted unless a quorum is present.

~~5.4)~~ Conflict of Interest

If a member recognizes that his or her own participation in a particular discussion or vote represents a conflict of interest, that member shall so state publicly and abstain from that discussion or vote. See additional provisions in Appendix A

VII COMPENSATION AND EXPENSES

Board members who are not employees of state agencies are eligible to receive reimbursement of \$25.00 per diem plus expenses "incurred in the performance of their duties." ~~{s. 15.07(5), Stats.}~~. The following policy defines the duties of members of the board, the performance of which establishes eligibility for per diem and expenses.

A. No Prior Approval Required

Board members will receive ~~per diem and~~ expenses for attending official meetings of the Livestock Facility Siting Review Board;

B. Prior Approval Required

Board members will receive ~~per diem and~~ expenses for attending the following meetings or activities if prior approval has been obtained from the board chair, ~~with the concurrence of the ARM administrator.~~

Meetings and activities for which prior approval is required are:

- 1) Attendance at ATCP Board meeting where presence is requested as part of a report on board activities
- 2) Other public appearances on behalf of the board.

VIII. REVIEW OF AND AMENDMENTS TO THE BYLAWS

Bylaws shall be reviewed at the December meeting of even numbered years. These bylaws may be altered, amended or repealed and new bylaws may be adopted by an affirmative vote of two-thirds (2/3) of four-the members present at any regular meeting provided that notice of each proposed change hereof or addition hereto has been delivered personally, or mailed to each member at such address as the member shall have designated to the board, not less than 10 days prior to the time of meeting at which the proposed change or addition is to be considered.

IX. STAFF ASSISTANCE

DATCP shall provide staff to assist the board in performing its statutory duties. [ss. 93.90 Stats.]

Bylaws originally adopted by the LFSRB in ____ 2006

Appendix A
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I. Procedures

A. Initiation of proceeding

1. Request for review

An aggrieved ~~party~~person, as defined in sec. 93.90, Stats., may initiate a review of proceeding by filing an appropriate document that includes all of the following:

- (a) The name and address of the aggrieved ~~party~~person, and the name and address and telephone number of its principal representative, if any.
- (b) A clear and concise statement that the ~~person~~ party filing the request meets the definition of aggrieved, s. 93.90(5)(a), Stats.
- (c) The names and addresses of the political subdivision, including the local administrative body that issued the decision, whose decision is being challenged.
- (d) The date the political subdivision issued the decision that is the subject of the request for review.
- (e) The name and address of the applicant, as listed on lines 1, 4 and 5 of the first page of the Application for Local Approval, if different from the aggrieved person.
- (f) A clear and concise statement of the item or items which the aggrieved ~~party~~person is challenging.

The board may require a party to provide additional information to meet the requirements of (a)-(f) above.

The appeal must be post-marked no later than 30 calendar days from the date that the political subdivision issued the decision which is the subject of the request for review. A request for review filed after this deadline will not be considered.

A request is not complete ~~and deemed filed~~ unless it meets the requirements of (a)-(f) above.

2. Docket

Upon receipt of a request for review, the board will assign a docket number and create a docket sheet.

3. Notice of Request for Review

The following parties-in-interest will be provided a notice of a request for review:

- (a) The aggrieved person filing the request for review
- (b) The applicant if the request for review was filed by another party
- (c) The political subdivision that issued the decision

An aggrieved person who did not file a request for review will not receive a notice but may participate in the proceedings as provided by these bylaws.

The notice shall include:

- (a) A copy of the request for review filed by an aggrieved person.
- (b) Each party shall be provided notice and shall place ~~The the assigned~~ docket number assigned to the request, which shall be used on all papers subsequently filed with the board.
- (c) A description of the review procedures of the board, including an explanation that the board may delay its request for the record of decision-making to resolve jurisdictional issues.
- (d) A statement that any party that meets the definition of an aggrieved person may file a statement of position.

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(e) A request that the political subdivision provide notice reasonably calculated to the inform anyone who owns, occupies, or has some other legal interest in the property within 2 miles of the proposed livestock facility that the local decision has been appealed to the board.:

43. ~~Notification to~~ Request for record of decision making ~~political subdivision~~

As soon reasonably appropriate, ~~Upon receiving a complete request for review,~~ the board shall ~~notify send a notice to~~ the political subdivision ~~requesting the record of decision-making of the request.~~ The notice shall be mailed by certified mail, return receipt requested or by personal delivery, with a signed affidavit to the clerk of each affected political subdivision. The political subdivision shall provide a certified copy of the record as defined in ATCP 50.sub. (4) to the board within 30 days after the day on which it receives the notice.

Note: ATCP 51.36, Wis. Adm. Code, provides identifies the following as part of a complete written record of its decision-making related to an application under s. ATCP 51.30:

- (1) The application under s. ATCP 51.30(1), and all subsequent additions or amendments to the application.
- (2) A copy of any notice under s. ATCP 51.30(5), and copies of any other notices or correspondence that the political subdivision issues in relation to the application.
- (3) A record of any public hearing related to the application. The record may be in the form of an electronic recording, a transcript prepared from an electronic recording, or a direct transcript prepared by a court reporter or stenographer. The record shall also include any documents or evidence submitted by hearing participants.
- (4) Copies of any correspondence or evidentiary material that the political subdivision considered in relation to the application.
- (5) Minutes of any board or committee meeting held to consider or act on the application.
- (6) The written decision required under s. ATCP 51.34(3).
- (7) Other documents that the political subdivision prepared to document its decision or decision-making process.
- (8) A copy of any local ordinance cited in the decision.

Note: The political subdivision must receive an application for approval that includes all the information required by Appendix A of the rule [ATCP 51.30(1)], issue a notice of complete application and a notice to adjacent property owners [ATCP 51.30(5) and (6)], issue a written decision to approve or deny a application [ATCP 51.34(3)], and have ordinance that requires local approval. [ATCP 51.10(2)]

A political subdivision that does not comply with the notice within 30 days shall be sent a second notice. The board may enforce this requirement using available legal remedies.

4. Time to make its decision

The 60 day requirement for making a final decision shall not start until the board has received a certified copy of the record of decision-making. The board will make a dated entry on the docket sheet when the political subdivision has filed a certified copy of the record.

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B. Pre-decision administrative procedures

1. Board Attorney

The attorney assigned to the board shall be provided a copy of the request for review and the certified record.

After receipt of the request and record, the board attorney will schedule the matter for consideration by the board at its next available meeting. The board attorney will arrange for the parties to receive notification about board review of the request.

The board attorney may make any other arrangements to expedite or facilitate review of a case including arrangements for the board to consult with the department of agriculture, trade and consumer protection or the department of natural resources concerning the application of the requirements related to water quality.

~~The board attorney shall not open the record to receive additional evidence except to receive evidence on jurisdictional questions.~~

2. Requirement for communications and papers.

All communications and papers related to a case before the board shall clearly show the title of the proceeding and the docket number.

All communications, documents and papers submitted to the board during any point in a proceeding, shall be submitted to the board at this address:

Livestock Facility Siting Board
c/o Wisconsin Department of Agriculture, Trade and Consumer Protection
Agricultural Resource Management Division
Bureau of Land and Water Resources
P.O. Box 8911
Madison, WI 53708-8911
Fax: (608) 224-4615

Except as otherwise provided in these rules, any document submitted to the board, prior to, during, or after hearing shall be submitted with seven (7) copies in addition to the original. All matters submitted to the board shall be printed, typed or otherwise legibly duplicated. The original of each document submitted shall be signed by an attorney or representative of record for the party, or in case of a party not so represented, by the party itself, or by an officer of the party if it is a corporation or an unincorporated association.

~~Notices of hearings, recommended decisions, orders, and other process or papers shall be submitted to parties residing or located in the state by certified mail.~~

All communications and papers submitted to the board shall be served on all parties not represented by counsel or upon their agents designated by them or by law. Submission upon such counsel or representative shall constitute submission upon the party.

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Proof of submission shall be submitted to the board only if the submission is challenged. ~~In such a case, the party whose submission is challenged shall submit a copy of the return post office receipt to the board as proof.~~

3. Statement of Position

At least two weeks before the board considers a matter, any person who meets the definition of an aggrieved person (including the applicant) and a party (including the political subdivision) may file a statement of position that explains why the challenge is or is not valid. A statement of position may not exceed five (8 1/2" x 11") pages with a font no smaller than 12 point.

C. Decision making process

1. Summary disposition

At any time during review, a case may be ~~recommended for~~ summarily dismissed~~ed~~ if a request for review is filed by a ~~party-person~~ who is not "aggrieved" or if the ~~request party~~ does not challenge a matter within the board's jurisdiction. A summary disposition of a case will not become final for fifteen (15) days after the decision is made. Within this period, the person who filed the the request for review may request that the Board reconsider its summary disposition.

Note: S. 93.90(5)(b) provides that an aggrieved person may challenge the decision of a political subdivision on an application for approval on the grounds that the political subdivision incorrectly applied the state standards under S. 93.90 (2) (a) that are applicable to the livestock facility siting or expansion or violated s. 93.90 (3), by requesting the board to review the decision.

An aggrieved person is a person who applied for approval of a livestock facility siting or expansion, a person who lives within two miles of the proposed livestock facility, or a person who owns land within two miles of the proposed livestock facility.

2. Board consideration

The board shall be provided the certified record at least two (2) weeks in advance of the date of the board's deliberation.

3. Rights of Parties-Additional evidence and argument

~~Any party shall have the right to appear by counsel or by any other representative to present at board meeting.~~ No party has a right to submit additional documentary evidence, ~~or~~ provide testimony from any witnesses, or present argument to the board. The board may open the record to receive additional evidence to resolve jurisdictional questions, and may seek oral argument if members deem it necessary.

4. Record of hearings or proceedings before board

A record of proceedings in open session shall be made using a tape recorder or other device. Minutes shall be prepared to record board actions.

5. Standard of review

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The board shall make its decision without deference to the decision of the political subdivision and shall base its decision only on the evidence in the record.

6. Deliberation

Every board meeting will be conducted in open session except that the ~~The~~ board may convene in closed session for the specific statutorily authorized purposes of “[d]eliberating concerning a case which was the subject of a quasi-judicial hearing before the board.” A closed session will only convene upon proper notice and compliance with procedures. As a matter of policy, the board will vote in open session in regard to any case, unless doing so would compromise the need for the closed session.

The board will follow the procedures in Wis. Stat. secs. 19.83 and 19.85(1).

Sec. 19.83 requires that every meeting of a governmental body such as the board be preceded by a public notice and be held in open session. All discussion at these meetings shall be held and all action of any kind, formal or informal, shall be initiated, deliberated upon and acted upon only in open session except as provided in sec. 19.85.

Before convening in closed session, sec. 19.85(1) requires that the governmental body such as the board pass a motion, by recorded majority vote, to convene in closed session. If a motion is unanimous, there is no requirement to record the votes individually.

No motion to convene in closed session may be adopted unless the chief presiding officer announces to those present at the meeting at which such motion is made, the nature of the business to be considered at such closed session, and the specific exemption or exemptions under sec. 19.85(1) by which such closed session is claimed to be authorized. Such announcement shall become part of the record of the meeting.

No business may be taken up at any closed session except that which relates to matters contained in the chief presiding officer’s announcement of the closed session.

Under sec. 19.85(2), no governmental body may commence a meeting, subsequently convene in closed session and thereafter reconvene again in open session within 12 hours after completion of the closed session, unless public notice of such subsequent open session was given at the same time and in the same manner as the public notice of the meeting convened prior to the closed session.

7. Final Decision

The board will issue a final written decision. If the board's final decision is appealed in circuit court, the board chair or designee shall certify the board's decision and record to the circuit court.

8. Extension of Time

Any time limit prescribed in s. 93.90(5) may be extended for good cause shown. Extensions may be granted even if a party has not requested an extension. Any such request to extend any

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time limit shall be in writing and be received at least 3 working days before the expiration of such time limit. Each party of record will be provided written notice of any extension.

D. Rules of Conduct

1. Communication by and to Board

No member of the board shall communicate, directly or indirectly, with any party or other person outside of the formal proceedings of the board regarding any issue related to the request for review without first consulting with board chair and then providing notice and opportunity for all parties to participate.

No person having knowledge that a request for an appeal hearing has been filed and no party to an appeal hearing shall communicate, directly or indirectly, with any member of the board outside of the review process.

A board member who receives an ex parte communication in violation of this section shall place on the case record all written communications received, all written responses made, a memorandum stating the substance of all oral communications received and responses made, and the identity of each person from whom the Board member received an ex parte communication. The board member shall advise all parties that these matters have been placed on the record. Upon request made within ten days after notice of the ex parte communication, any party or other person involved in such ex parte communication desiring to rebut the communication shall be allowed to place a written rebuttal statement on the record.

~~If necessary to eliminate the effect of an ex parte communication received in violation of this section, a board member who receives the communication may be disqualified from participation in the review process.~~

2. Disqualification and Recusal

A board member shall be subject to disqualification for bias, prejudice, interest, or any other good cause. Immediately upon becoming aware of facts or circumstances supporting disqualification, a party shall file with the Chair of the board a motion of disqualification against any member of the board. Upon a party's motion for disqualification, the member of the board against whom the motion was filed shall consider the motion and determine whether to disqualify himself or herself. A determination not to disqualify oneself may be overturned by a favorable vote of at least three members of the board. A person who is disqualified cannot participate in or be present for any aspect of a board's decision.

~~b~~Board members, on their own initiative, shall recuse themselves whenever they determine they have irreconcilable conflicts of interest or the appearance of such conflicts of interest. A member of the board shall accomplish recusal by filing a written notice of recusal with the Chair of the board. Such written notice shall include sufficient details to enable the Chair to understand the basis for recusal.

Schedule of Meetings

Livestock Facility Siting Review Board

June-December 2006

<u>Date*</u>	<u>Location**</u>
June 30	DATCP Boardroom (Rm 106), 2811 Agriculture Drive, Madison
July 21	DATCP Boardroom (Rm 106), 2811 Agriculture Drive, Madison
Aug 18	DATCP Boardroom (Rm 106), 2811 Agriculture Drive, Madison
Sept 15	DATCP Boardroom (Rm 106), 2811 Agriculture Drive, Madison
Oct 20	DATCP Boardroom (Rm 106), 2811 Agriculture Drive, Madison
Nov 17	DATCP Boardroom (Rm 106), 2811 Agriculture Drive, Madison
Dec 15	DATCP Boardroom (Rm 106), 2811 Agriculture Drive, Madison

* Meeting may be cancelled with notice to the board

** Meetings are generally held in Madison, but the location may be changed